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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,718	08/09/2002	Wyatt Price Hargett JR.	1700.80B	4227

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EXAMINER
BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/064,718	Applicant(s) HARGETT ET AL.	
	Examin r Christopher P Bruenjes	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cov r sh t with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 May 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-16 and 36-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-16 and 36-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The obviousness-type double patenting rejection of claims 1-16 of record in Paper #3, Pages 2-3 Paragraph 1 have been withdrawn due to Applicant's arguments in Paper #6.

2. The 35 U.S.C. 112 rejections of claims 1-16 and 36-37 of record in paper #3, Pages 3-4 Paragraph 2 have been withdrawn due to Applicant's arguments in Paper #6.

REPEATED REJECTIONS

3. The 35 U.S.C. 102 rejections of claims 1, 4, 9-11, and 36-37 as anticipated by Giraud is repeated for the reasons previously of record in Paper #3, Pages 4-5 Paragraph 3.

NEW REJECTIONS

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 4-16, and 36-38 are rejected under the judicially created doctrine of double patenting over claims 1-4 of U. S. Patent No. 6,534,140 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A microwave-transparent circumferentially wound cylindrical layer of yarns fixed with a first polymer layer on one surface of said wound layer composed of polyimide and a chemically-inert polymer comprising tetrafluoroethylene on the opposite surface of said wound layer from said first structural polymer and a layer of tetrafluoroethylene on the outside of the first structural polymer. The wound layer comprises filaments or yarns that do not form a woven, knitted, or non-woven fabric. To further explain what a wound layer that

is not woven, knitted, or non-woven fabric, attention is drawn to the drawings and specification, especially figures 4 and 5, which show that the wound layer comprises contiguous yarns. While the original patent was subject to a restriction requirement, a double-patenting rejection is not prohibited where the claims of the second patent are to the "same invention" as the first application or patent, MPEP 804.01 (F).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4-6, 9-12, 16, and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett (USPN 5,427,741).

Bennett anticipates a microwave-transparent pressure resistant reaction cylinder surround by a protective composite sleeve (see abstract). The sleeve comprises a sleeve from of a microwave-transparent circumferentially wound cylindrical layer of yarns fixed with a first polymer layer composed of a polyimide resin such as polyetherimide and a layer of polyimide resin or tetrafluoroethylene on the opposite side from the first structural polymer. Additional sheets are added to the outside and inside of the polyimide/wound layer/polyimide sheet. Further there is an embodiment in which the sheets are arranged in a structure of the following fluoropolymer/polyimide/wound yarn/polyimide/fluoropolymer (col.6, l.45-65), in which the fluoropolymer is polytetrafluoroethylene (col.8, l.50-65). The wound layer is formed from yarns or filaments either as individual fibers positioned so as to take the strains to which the devices are subjected during use, or fibers wound in yarns, or yarns formed into braids, weaves, or non-woven mats (col.10, l.23-32). As shown in Figure 8, the yarns are contiguous to each other because are connected throughout in unbroken sequence just as the applicant defines contiguous by Figure 5 of the application. Note the only definition provided by the instant invention for contiguous yarns is Figure 4 and 5, which shows

yarns running parallel to each other, which is also the case in Figure 8 of the Bennett reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 7-8 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (USPN 5,427,741).

Bennett teaches all that is claimed in claims 4 and 10 as shown above, but fails to explicitly teach an additional textile

layer and additional structural polymer layer between said first structural polymer layer and said inert outer liner of polytetrafluoroethylene. However, Bennett does teach that several layers of the sheets containing a textile layer and structural polymer are added and that when a sheet is formed containing a fluoropolymer layer, the fluoropolymer layer is always on the innermost and outermost layers because the fluoropolymer is chemically inert (col.6, l.50-65).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to form a sleeve having additional textile and structural polymer layers located between the first structural polymer layer and the inert outer liner, because the inert outer liner containing polytetrafluoroethylene is always the innermost and outermost layer of the sleeve in order to provide the sleeve with chemical inertness, as taught by Bennett.

ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments filed in Paper #6 regarding the double patenting rejections of claims 1-16 over Patent #6,136,276 have been considered but are moot since the rejection has been withdrawn.

8. Applicant's arguments filed in Paper #6 regarding the 35 U.S.C. 112 first paragraph rejection of claims 1-16 and 36-37 of record have been considered and found persuasive, therefore the rejection has been withdrawn.

The applicant clarified the word "contiguous" to refer to yarns wound in a manner similar to figure 4 and 5 of the application, and that those figures represent yarns that are connected throughout in unbroken sequence, which does not require that nothing else such as resin is found between the yarns, because the resin is used to connect the yarns. Also the picture which is used to define "contiguous" merely shows yarns wound parallel to each other, and this is the definition taken from the specification of the application in order to define "contiguous".

9. Applicant's arguments filed in Paper #6 regarding the 35 U.S.C. 102 rejections of claims 1-4, 9-11, and 36-37 as anticipated by Giraud have been fully considered but they are not persuasive.

In response to Applicant's argument that Giraud does not teach a chemically inert polymeric inner liner on the opposite surface of the wound layer from the first structural polymer, Giraud teaches that the inner layer is formed from a glass

member and/or beads embedded in a polymeric resin (col.6, l.46-60). The resin is formed from a transparent unsaturated polyester resin (col.4, l.60-65), which is known to be chemically inert to certain chemicals, such as acids. Therefore, the broad recitation of "chemically inert polymeric" is met by the teachings of Giraud. The resin is also formed from polyurethanes, polyalkyl methacrylates, partially crosslinked polybutadienes, and transparent polymers based on styrene (col.3, l.54-65).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pflederer (USPN 3,368,708).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned

are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB
June 16, 2003

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

6/25/03